

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>DENISE McGRAIN</b> <i>Plaintiff</i>	:	<b>CIVIL ACTION</b>
	:	
	:	<b>NO. 21-1539</b>
<b>v.</b>	:	
	:	
<b>C.R. BARD, INC., et al.</b>	:	
	:	
<i>Defendants</i>	:	

**ORDER**

**AND NOW**, this 30<sup>th</sup> day of July 2021, upon consideration of Defendants' *motion to dismiss for failure to state a claim* filed pursuant to Federal Rule of Civil Procedure 12(b)(6), [ECF 3], Plaintiff's opposition thereto, [ECF 8], Defendants' reply, [ECF 11], and the allegations in the complaint, [ECF 1], it is hereby **ORDERED** that, for the reasons set forth in the accompanying Memorandum Opinion, the motion is **GRANTED** as follows:

1. Plaintiff's claims premised on strict liability (Counts II-IV), breach of implied warranty of merchantability (Count VI), fraudulent concealment (Count VIII), and unjust enrichment (Count X) are **DISMISSED**, with prejudice; and
2. Plaintiff's claims premised on negligence (Count I), breach of express warranty (Count V), fraudulent misrepresentation (Count VII), and negligent misrepresentation (Count IX) are **DISMISSED**. Plaintiff is allowed leave to amend these particular claims, provided facts exist to support the requisite amendments. Plaintiff shall file an amended complaint consistent with the Memorandum Opinion by August 19, 2021.

**BY THE COURT:**

/s/ Nitza I. Quiñones Alejandro

**NITZA I. QUIÑONES ALEJANDRO**

*Judge, United States District Court*